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Directive 92-8: The Deleading Credit; Condominium Common Areas and Facilities

ISSUE: How is the lead removal credit determined for residential condominium unit owners or tenants when the area deleading involves the residential condominium's common areas and facilities?
DIRECTIVE:

1. If a unit owner or tenant pays for the inspection and any necessary deleading of his/her own unit and if the accessible common areas are also inspected and deleading, the credit is available to the unit owner or tenant even if other units are not inspected and deleading.

2. An owner or tenant who pays for deleading his/her own unit cannot take the credit unless the accessible common areas are inspected and deleading as necessary.

3. An owner or tenant whose unit is not inspected (and deleading if found to contain materials with dangerous levels of lead) cannot take the credit even if he/she pays for part of the costs for deleading the accessible common areas.

DISCUSSION OF LAW:

A. Lead Removal Requirement
General Law c. 111, § 197, requires that whenever a child under six lives in any residential premises in which accessible materials contain dangerous levels of lead, the owner of the premises must remove or cover those materials.

B. Deleading Credit
General Laws Chapter 62, § 6(e), states that any owner or tenant of a residential premises who pays for the removal or covering of any accessible materials containing dangerous levels of lead is allowed a nonrefundable credit equal to the cost of removal or one thousand dollars per dwelling unit, whichever is less. "Accessible" means any surface readily accessible to children under six years of age. 830 CMR 62.6.2(2).[1](#)

C. Structure of Condominium Ownership
Condominium ownership involves real property in which each owner has an exclusive interest in his or her unit in addition to an undivided interest with all other unit owners in the condominium's common areas and facilities. Condominium common areas and facilities include party walls, common walls, halls, lobbies, public stairs, the land on which the building is located, the basement, yard, recreational facilities, and other areas normally in common use.
G.L. c. 183A, § 1.
Unlike most other forms of residential real property ownership, the condominium situation involves individual as well as common ownership rights and responsibilities. Each condominium unit together with its "undivided interest" in the common areas and facilities accrues all of the rights pertaining to the holding of other kinds of real estate. G.L. c. 183A, § 3.

D. Credit Available to Condominium Owners
Because a condominium owner's interests extend both to the owner's individual unit and to common

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areas, a condominium owner may claim the lead removal credit for the amount the owner pays to delead common areas as well as the amount paid to delead the individual unit. Condominium association assessments to pay for deleading common areas may qualify for the lead removal credit even if the owner's individual unit does not contain lead paint. However, the credit is available only if both the individual unit and accessible common areas are inspected and delead as necessary. In all cases, the maximum credit available to the owner of a single condominium unit is \$1,000.

E. Deleading Compliance Procedure

The presence of accessible materials containing dangerous levels of lead in a residential premises must be established by a licensed inspector. Following the removal or covering of these accessible materials by a licensed deleader, the premises must be reinspected by a licensed inspector. If the inspector certifies that the delead premises is in compliance with the deleading laws, the inspector must file a certification form with the Department of Revenue. See G.L. c. 62, § 6(e). This form (Form CLP) must be filed for each dwelling unit that has been delead and certified as being in compliance with deleading laws. The owner or tenant claiming the credit must file Schedule LP along with his or her tax return. A copy of the Form CLP should be attached to the Schedule LP. See 830 CMR 62.6.2(5).

F. Examples

The following examples illustrate when the lead removal credit may be claimed by a condominium owner or tenant. The examples assume that the units and accessible common areas have been properly inspected, delead, and reinspected and that all other requirements of 830 CMR 62.6.2 have been met. In all cases, the maximum credit is \$1,000.

Ann pays for the deleading of her unit and shares the cost of deleading the accessible common areas and facilities. Ann can take a credit even if Andy, her neighbor, does not delead his unit. The credit is based on Ann's cost of deleading her unit and her portion of the cost for deleading the accessible common areas and facilities.

Bob's unit contains dangerous levels of lead, but Bob does not delead his unit. Bob shares the cost of deleading the accessible common areas and facilities. Bob cannot take a credit.

Carol's unit is inspected and does not contain dangerous levels of lead, but the accessible common areas and facilities do. Carol shares the cost of deleading those areas. Carol can take the credit based on her portion of the cost of deleading the accessible common areas and facilities and the cost of inspecting her unit.

Dan pays for the deleading of his unit. The accessible common areas and facilities are inspected and do not contain dangerous levels of lead. Dan can take a credit based on the cost of deleading his unit.

Dave pays for the deleading of his unit, but the accessible common areas and facilities contain dangerous levels of lead and are not delead. As a result, Dave is not eligible for deleading certification from a licensed inspector. Dave, therefore, cannot take a credit. Note, however, that if a child under six lives in the condominium complex, the condominium association must delead the accessible common areas and facilities. After these areas are inspected, delead and certified, Dave may take the credit, provided his unit has been inspected and certified.

Ellen owns a unit in Building One of a three building condominium complex. Frank owns a unit in Building Two of the same condominium complex. Building One has been inspected and has accessible common areas and facilities that contain dangerous levels of lead. Buildings Two and Three have been inspected and do not contain dangerous levels of lead in accessible common areas and facilities. Ellen has her unit inspected; it does not contain dangerous lead levels. Frank has his unit inspected; it does contain dangerous levels of lead. Frank then has his unit delead and certified.

Ellen may take the credit based on the cost of the inspection of her unit and the cost of deleading the accessible common areas and facilities of Building One. Frank may take the credit based on the cost of deleading his unit and the cost of deleading the common areas and facilities of Building One. In addition, any owner of a unit in Building One, Two, or Three may take the credit based on the cost of deleading Building One's accessible common areas and facilities, and the unit owner's cost of having his or her unit inspected and delead and certified as necessary.

/s/Mitchell Adams
Mitchell Adams
Commissioner of Revenue

DOR-D 92-8

December 23, 1992

Footnotes:

1. Generally, accessible common areas extend from the basement, if applicable, to the floor on which the dwelling unit under inspection is located. These areas may include passage-ways and floors above the floor on which the dwelling unit under inspection is located if such areas present the threat of lead exposure. Accessible common areas do not include rooms or closets to which a child has no possible access. 105 CMR 460.730(E).